

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

NAYDA ALVAREZ, *et al.*,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as  
President of the United States of America, *et al.*,

Defendants.

No. 19-cv-00404 (TNM)

**DEFENDANTS' NOTICE OF FILING SUPPLEMENTAL DECLARATION**

Defendants hereby file in support of Defendants' Motion to Dismiss (ECF No. 12) the Supplemental Declaration of Loren Flossman, Acquisition Program Manager for the Wall Program Management Office, U.S. Border Patrol Program Management Directorate, U.S. Customs and Border Protection (attached hereto as Exhibit 1).

Dated: April 12, 2019

Respectfully submitted,

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Assistant Attorney General

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/s/ Andrew I. Warden  
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# **EXHIBIT 1**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

Alvarez, *et al.*,

Plaintiffs,

v.

Trump, *et al.*,

Defendants.

No. 1:19-cv-00404 (TNM)

**SUPPLEMENTAL DECLARATION  
OF LOREN FLOSSMAN**

I, Loren Flossman, declare as follows:

1. I am the Acquisition Program Manager for the Wall Program Management Office (Wall PMO), U.S. Border Patrol Program Management Directorate, U.S. Customs and Border Protection (CBP), an agency of the Department of Homeland Security (DHS). Wall PMO is currently responsible for border barrier projects, including the border barrier projects that are ongoing or being planned for the Rio Grande Valley sector (RGV).
2. In my position, I am personally aware of CBP activities occurring in support of ongoing or planned border barrier projects in the RGV area of southern Texas, including activities on or near the properties of Ms. Nayda Alvarez, Mr. Leonel Romeo Alvarez, and Ms. Yvette Gaytan (collectively, the individual Plaintiffs). I make this declaration based upon my personal knowledge and belief, as well as information that I have received in my official capacity.
3. I previously executed a declaration in this matter, which was filed in support of the Defendants' motion to dismiss (*See* Dkt. No. 8-1). In that declaration (paragraph 16), I advised that the project planned for a tract of land designated as RGV-RGC-5035 (the

Tract), in which the individual Plaintiffs may have ownership interests, will be funded using CBP's Fiscal Year 2018 appropriations (Public Law No. 115-141, § 230).

4. Since filing my April 1, 2019 declaration, CBP has made changes to the planned funding sources for the barrier project planned for the Tract. CBP has determined that it will use CBP's Fiscal Year 2019 appropriations (Public Law No. 116-6, § 230) rather than CBP's Fiscal Year 2018 appropriations. CBP made changes to the project plans in various locations, including the Tract, and regrouped certain miles within the proposed alignment in RGV in order to comply with the language in the Fiscal Year 2019 appropriation in Section 231, which prohibits construction of pedestrian fencing in certain locations, and Section 232, which requires consultation with local officials in certain locations. Because of these modifications, the project planned for the Tract will be funded out of the Fiscal Year 2019 appropriation.
5. Regardless of CBP's decision to change the funding source, however, the project planned for the Tract still will not, as the individual Plaintiffs allege, use funds transferred pursuant to authorities invoked in the President's February 15, 2019 national emergency proclamation, including 10 U.S.C. § 2808, or pursuant to 10 U.S.C. § 284.
6. Furthermore, I previously executed a second declaration, which was also filed in support of the Defendants' motion to dismiss (*See* Dkt. No. 8-2). In that declaration (paragraph 12), I advised that, with respect to funding barrier construction along the southern border, CBP will use funds received from the Treasury Forfeiture Fund pursuant to 31 U.S.C. § 9705 exclusively for projects in the RGV. CBP has determined, however, that the project planned for the Tract will not use TFF funds.

7. TFF funds will also not be used to fund barrier construction projects in any of the five locations within RGV for which Congress in the Fiscal Year 2019 appropriation prohibited construction of pedestrian fencing (Public Law No. 116-6, § 231).

This declaration is made pursuant to 28 U.S.C. § 1746. I declare under penalty of perjury that the foregoing is true and correct to the best of my current knowledge.

Executed on this 11 day of April, 2019.

Loren  
Flossman

Digitally signed by Loren Flossman  
DN: cn=Loren Flossman, o=Border Wall  
PMO, ou=Portfolio Manager,  
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c=US  
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Loren Flossman  
Acquisition Program Manager  
U.S. Customs and Border Protection